

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JIMMIE LEWIS,)
Plaintiff,)
v.) C.A. No. 04-1350-GMS
DR. SYLVIA FOSTER, STAFF)
MEMBERS, THE DELAWARE)
PSYCHIATRIC CENTER and)
MR. GREY,)
Defendants.)

**DEFENDANT ROBERT GRAY'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF HIS MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

- 1) Plaintiff has filed this action against various defendants alleging violations of 42 U.S.C. § 1983, which provides that

“[e]very person who, under color of any statute, ordinance, regulation, custom or usage, of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured. . . .”

- 2) For purposes of this motion, the Court must infer that Robert Gray is an agent or employee of the Delaware Psychiatric Center, an agency of the State of Delaware.
- 3) In order to state a claim for relief under 42 U.S.C. § 1983, plaintiff must allege that defendant performed some act under color of “any statute, ordinance, regulation, custom or usage” of the State and that such act subjected plaintiff to the deprivation of some constitutionally or statutorily protected right.
- 4) Defendant is mentioned only on p. 2 of the complaint within the description of an altercation among plaintiff and several other individuals, including defendant.
- 5) Plaintiff fails to identify, overtly or by implication, any constitutionally or statutorily protected right of which he was deprived by any action of defendant.

6) Since plaintiff invokes this Court's jurisdiction solely through §1983 and the complaint fails to include any allegation sufficient to sustain recovery under that statute, the complaint must be dismissed for failure to state a claim for which relief can be granted. Fed. R. Civ. P. 12(b)(6).

WHEREFORE, moving defendant respectfully requests this Honorable Court to dismiss the action against him for failure to state a claim for which relief might be granted.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Phebe S. Young
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DATE: August 5, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that on August 5, 2005, she electronically filed the attached Memorandum in Support of Motion to Dismiss with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Cynthia G. Beam, Esq., #2565
Reger Rizzo Kavulich & Darnell, LLP
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and that she caused two copies of the document to be mailed by United States Postal Service to the following non-registered participant:

Jimmie Lewis
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